

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 86976.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:
Rentals

Where, following a drawing of simultaneously filed oil and gas lease applications, the first drawn applicant fails to submit the executed lease agreement and advance rental within 30 days of receipt of notice, the application is properly rejected.

APPEARANCES: C. H. Postlewait, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

C. H. Postlewait has appealed from the March 14, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his simultaneous oil and gas lease application selected with first priority in the July 1983 simultaneous drawing for parcel WY 507.

BLM stated in its decision that Postlewait received the lease forms and request for payment on October 28, 1983; that payment was due within 30 days or on or before November 28, 1983 (the 27th being a Sunday); and that the forms and rental payment were received on November 29, 1983, 1 day late.

Regulation 43 CFR 3112.6-1(a) states that the executed lease offer forms and rental payment must be filed with the proper BLM office within 30 days of receipt of the notice. Regulation 43 CFR 3112.5-1(c) provides that the application of the first priority applicant "shall be rejected if the offer is not filed in accordance with § 3112.6-1 of this title."

[1] The regulations requiring execution of the lease agreement and payment of the advance rental within 30 days of notice are mandatory. The regulations provide no leeway for consideration of excuses for failure to pay

timely. See Robert D. Nininger, 16 IBLA 200 (1974), aff'd, Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975); see also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980). BLM may not accept the forms and payment after the 30-day period because the rights of the second- and third-qualified applicants have intervened. Paul C. Deters, 80 IBLA 121 (1984); Pioneer Farmout #1, Ltd., 76 IBLA 337 (1983).

Even if a failure to pay timely could be excused, there would be no grounds for doing so in this case. Appellant claims that he was informed by the Post Office "that to deliver mail to Billings, by express mail would take them overnite, regular mail first class would take two days but to make sure I should allow them three days." (Emphasis added.) He stated that the Post Office "had four days but it took five." Appellant claims that bad weather probably delayed delivery of his letter. He submits copies of newspaper articles reporting snowstorms in the West during the last week in November 1983, and he states, "Montana was having its third snowstorm in eight days. This was the day that my letter was delivered." Appellant, however, is apparently confused about where he sent the forms and check. They were sent to the BLM State Office in Cheyenne, Wyoming. The land involved is in Wyoming, and the Wyoming State Office issued the decision rejecting his application.

In addition to being mistaken concerning the destination of his submissions, appellant is also confused about time for delivery. The case record contains the envelope used by appellant to forward his payment. That envelope bears a Canton, Ohio, postmark of "November 26, 1983, P.M." Therefore, the delivery to Cheyenne on November 29, 1983, was not a 5-day delivery as suggested by appellant, but was, in fact, a 3-day delivery, which appellant states was promised to him for delivery to Billings.

We note also that on appeal appellant has provided another ground on which to base a rejection of his application. In his notice of appeal he states:

The address you used * * * [the one provided by appellant on his application] is not my home address. It is the address of a small business for which I am responsible. We have four full time and three part time employees. This oil lease was a company venture. It was paid for by a company check and any money earned would be kept in the company.

Appellant's statement is a clear admission that the real applicant for the lease is the company, and that appellant was acting on behalf of the company in making the filing. Although the details of the arrangement between appellant and the company with regard to the application are not set forth, at a minimum it appears there was a failure to disclose all interested parties in the lease application, as required by 43 CFR 3112.2-1(b). An application, which does not meet the requirements of 43 CFR Subpart 3112 must be rejected. 43 CFR 3112.5-1(a).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge